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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 CARLOS ESCOBAR,

Case No. 2-10-cv-01973-KJD-NJK

8 Petitioner,

ORDER

9 v.

10 BRIAN E. WILLIAMS,¹ *et al.*,

11 Respondents.

12 Pending before the court are petitioner's motion for leave to file second amended
13 petition (ECF No. 79), motion to seal exhibit (ECF No. 81), and motion for stay and
14 abeyance (ECF No. 83).

15 Petitioner seeks to add three claims to his pending habeas petition – all premised
16 on an allegation that the State of Nevada is refusing to observe petitioner's correct date
17 of birth, thereby depriving him the benefit of Nev. Rev. Stat. § 213.12135. Made effective
18 on October 1, 2015, the statute mandates that a person sentenced as an adult for an
19 offense committed when he or she was younger than 18 years old is eligible for parole
20 after serving 15 years if the crime did not result in death, or after 20 years if it did. Nev.
21 Rev. Stat. § 213.12135. Petitioner is currently serving a life sentence without possibility of
22 parole on a first degree murder conviction and claims to have already served twenty years.

23 Petitioner has filed a petition for writ of mandamus in the Nevada courts that, if
24 granted, would compel the Nevada Department of Corrections to recognize petitioner's
25 claimed date of birth and determine him eligible for parole. ECF No. 80-17. He asks this
26 court to stay proceedings in this habeas case and hold them in abeyance until he
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28 ¹ Brian E. Williams is substituted for Anthony Scillia as warden of High Desert State Prison.
See Fed. R. Civ. P. 25(d).

1 completes his state court litigation. For reasons that follow, this court will deny petitioner's
2 motions.

3 Matters relating to state sentencing law generally are not cognizable on federal
4 habeas review. *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991) (“[I]t is not the province of
5 a federal habeas court to reexamine state-court decisions on state-law grounds.”).
6 Nonetheless, a state court’s misapplication of state sentencing law may violate due
7 process if “[the error] is so arbitrary or capricious as to constitute an independent due
8 process” violation. *Richmond v. Lewis*, 506 U.S. 40, 50 (1992). Here, petitioner’s
9 allegations do not establish that the State has misapplied Nevada’s sentencing laws.
10 Instead, they merely show that there is a factual dispute as to petitioner’s actual date of
11 birth.

12 More importantly, to the extent petitioner is asking this court to require the State of
13 Nevada recognize his parole eligibility, such relief is not available by way of a federal
14 habeas petition. “Challenges to the validity of any confinement or to particulars affecting
15 its duration are the province of habeas corpus; requests for relief turning on circumstances
16 of confinement may be presented in a § 1983 action.” *Nettles v. Grounds*, 830 F.3d 922,
17 927 (9th Cir. 2016) (internal quotations and citations omitted). A habeas petition is the
18 exclusive vehicle for claims brought by state prisoners that fall within “the core of habeas.”
19 *Id.* Conversely, “a § 1983 action is the exclusive vehicle for claims brought by state
20 prisoners that are not within the core of habeas corpus.” *Id.* Where success on a
21 petitioner’s habeas claim would not necessarily lead to his immediate or earlier release
22 from custody, the claim does not fall within “the core of habeas corpus.” *Id.* at 934–35.

23 In *Nettles*, a prison inmate serving an indeterminate life sentence with the possibility
24 of parole was found guilty of a disciplinary infraction and, as a result, had thirty days of
25 good time credits revoked. 830 F.3d at 927. The inmate filed a habeas petition in federal
26 district court seeking restoration of the loss of good time credits and expungement of the
27 rule violation report that led to the loss of good time credits. *Id.*

1 The Ninth Circuit held that the district court lacked jurisdiction over the inmate's
2 claim because expunging his rules violation report "would not necessarily lead to
3 immediate or speedier release because the expungement of the challenged disciplinary
4 violation would not necessarily lead to a grant of parole." *Id.* at 934–35. Although a rule
5 violation is relevant to whether a prisoner is suitable for parole, "the presence of a
6 disciplinary infraction does not compel the denial of parole, nor does an absence of an
7 infraction compel the grant of parole." *Id.* Accordingly, the Ninth Circuit held that the
8 inmate's challenge to the rules violation report did not lie "at the core of habeas." *Id.*

9 Likewise, in this case, petitioner's mere eligibility for parole does not result,
10 perforce, in his immediate or speedier release. Instead, "[t]he decision of whether or not
11 to grant parole lies within the discretion of the parole board and the creation of standards
12 does not restrict the Parole Board's discretion to grant or deny parole." *Wydeven v.*
13 *Warden, Lovelock Corr. Ctr.*, 238 P.3d 867 (Nev. 2008) (citing Nev. Rev. Stat. §
14 213.1099(2)). Thus, under *Nettles*, this court lacks jurisdiction over the claims petitioner
15 seeks to add to his habeas petition. Accordingly, the court must deny petitioner's motion
16 for leave to amend his petition and his motion for stay and abeyance.

17 IT IS THEREFORE ORDERED that petitioner's motion for leave to file second
18 amended petition (ECF No. 79) and motion for stay and abeyance (ECF No. 83) are both
19 DENIED.

20 IT IS FURTHER ORDERED that petitioner's motion for leave to file exhibit under
21 seal (ECF No. 81), respondents' motion for extension of time (ECF No. 84), and motion
22 for late filing (ECF No. 85) are all GRANTED *nunc pro tunc* as of their respective filing
23 dates.

24 DATED July 10, 2018

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UNITED STATES DISTRICT JUDGE